



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164579

PRELIMINARY RECITALS

Pursuant to a petition filed March 06, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on March 31, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether iCare correctly reduced Petitioner's Personal Care service hours.

NOTE: The record was held open to allow iCare to submit documentation of the policy on which it determine based its determination of how much time each task takes to complete. iCare submitted documents it numbered as 7 and 8, which consisted of a Personal Care Time Allocation Table and an iCare interdepartmental procedure excerpt, respectively.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Liz Bartlett, General Counsel
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 45 years old, lives alone and suffers from arthritis, multiple sclerosis/ALS, chronic pain, anxiety disorder, depression and visual impairments. (Exhibit 3, pgs. 26, 27 and 32)
3. The December April 1, 2014 iCare completed what it refers to as a Supportive Care Tool and allocated the following times for the following tasks:

Living Area Dusting	10 minutes per week
Living Area Vacuuming	10 minutes per week
Cleaning Tub/Sink	10 minutes per week
Cleaning toilet/commode (7x per week)	35 minutes per week
Mop Bathroom	10 minutes per week
Change sheets/linens (1x per week)	10 minutes per week
Clean Stove top/counters	10 minutes per week
Sweep/Mop Kitchen	10 minutes per week
Rotate Food in Refrigerator	5 minutes per week
Wash/dry/put away dishes (7 x per week)	35 minutes per week
Empty Garbage (2x per week)	10 minutes per week
Laundry on-site (1x per week)	60 minutes per week
Grocery/Shopping (1x per week)	30 minutes per week
Breakfast Prep. (7x per week)	70 minutes per week
Lunch Prep. (7x per week)	70 minutes per week
Dinner Prep. (7x per week)	140 minutes per week
Transport/attend/report medical appointments (1x per week)	60 minutes per week

585 minutes or 9.75 hours per week

(Exhibit 1, pg. 51)

4. On May 7, 2014, iCare completed what it referred to as a Personal Care Tool and allocated the following times for the following tasks:

Combing Hair (3x per week)	10 minutes per task	30 minutes per week
Lotion Application (7x per week)	5 minutes per task	35 minutes per week
Nail Care (1x per week)	5 minutes per task	5 minutes per week
Undressing/Dressing (2x per day)	30 minutes per day	210 minutes per week
Tub/Shower bathing (2x per week)	90 minutes per task	180 minutes per week
Sponge bathing (5x per week)	30 minutes per task	150 minutes per week
Incontinence Assistance (7x per week)	5 minutes per task	35 minutes per week

645 minutes or 10.75 hours per week

(Exhibit 1, pg. 50)

5. On January 8, 2015 iCare completed another Supportive Care Tool and allocated the following times for the following tasks:

Living Area Dusting	10 minutes per week
Living Area Vacuuming	10 minutes per week
Cleaning Tub/Sink	10 minutes per week
Cleaning toilet/commode (7x per week)	35 minutes per week
Mop Bathroom	10 minutes per week
Change sheets/linens (1x per week)	10 minutes per week
Clean Stove top/counters	10 minutes per week
Sweep/Mop Kitchen	10 minutes per week
Rotate Food in Refrigerator	5 minutes per week
Wash/dry/put away dishes (7 x per week)	35 minutes per week
Empty Garbage (2x per week)	10 minutes per week
Laundry on-site (2x per week)	120 minutes per week
Grocery/Shopping (1x per week)	30 minutes per week
Breakfast Prep. (7x per week)	70 minutes per week
Lunch Prep. (7x per week)	105 minutes per week
Dinner Prep. (7x per week)	175 minutes per week
Transport/attend/report medical appointments (1x per week)	60 minutes per week

 175 minutes or 11.92 hours per week

(Exhibit 1, pg.48)

6. Also on January 8, 2015, iCare completed another Personal Care Tool and allocated the following times for the following tasks:

Combing Hair (3x per week)	10 minutes per task	30 minutes per week
Lotion Application (7x per week)	5 minutes per task	35 minutes per week
Nail Care (1x per week)	5 minutes per task	5 minutes per week
Undressing/Dressing (2x per day)	30 minutes per day	210 minutes per week
Tub/Shower bathing (3x per week)	30 minutes per task	90 minutes per week
Sponge bathing (4x per week)	15 minutes per task	60 minutes per week
Incontinence Assistance	eliminated	

 430 minutes or 7.16 hours per week

(Exhibit 1, pg. 48)

7. On January 9, 2015, iCare completed a RAD (Resource Allocation) tool, to determine how many hours of personal care and supportive home services the Petitioner needed. The RAD documentation sheet indicated that the Petitioner previously received 49 hours per week of combined personal care and supportive home care services, but that this level of service was not cost effective. The RAD determined that 19.25 hours per week of combined services, comprised of 7.25 hours of personal care services and 12 hours of supportive home care services, would be appropriate. (Exhibit 1, pgs. 44-47)
8. On January 13, 2015, iCare sent the Petitioner a notice that her supportive home care services would be reduced from 39 hours per week to 12 hours per week, effective January 28, 2015. (Exhibit 1, pg. 36)
9. On January 14, 2015, iCare completed a Long Term Care Functional Screen to determine the Petitioner's required level of care and determined that the Petitioner needs assistance with bathing, dressing, eating, mobility in the home, transferring, meal preparation, medication administration/management, laundry and/or chores and with transportation. (Exhibit 1, pgs. 28-31)
10. On February 2, 2015, the Petitioner filed a grievance with iCare. (Exhibit 1, pg. i)
11. On March 3, 2015, iCare sent the Petitioner a notice, indicating that the decision to reduce her supportive home care services was upheld. (Exhibit 2)
12. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 12, 2015. (Exhibit 7)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. It is, in short, a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case iCare, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

The aforementioned administrative code further notes that personal care and supportive home care services are among the services that typically will be required to be available. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services, the agency bears the burden to prove it correctly reduced the services.

In the case at hand, iCare has not made clear what the Petitioner's prior level of service was. According to the RAD completed on January 9, 2015, the Petitioner's prior level of service was 49 hours per week of combined personal care and supportive home care. According to the January 13, 2015 notice that was sent to the Petitioner, her previous level of service was 39 hours per week of combined personal care and supportive home care services. However, looking at the Supportive Care Tool and Personal Care Tool completed in 2014, they state that Petitioner was approved for 10.75 hours per week of personal care services and 9.75 hours per week of supportive home care services, for a total of 20.5 hours per week of combined services.

Complicating things further is the fact that iCare is using the phrase "Supportive Home Care" to mean a combination of personal care services and supportive home services, even though they are two, separate categories of services.¹

It may very well be that the administrative staff at iCare made a typographical error, since the April 2014 Supportive Care Tool showed approval of 39 *units* of supportive care services per week.

¹ The 2015 MCO, <http://mltc.wisconsin.gov/2015/>, contract defines supportive home care services under Addendum XA, paragraph 24 as:

Supportive home care (SHC) is the provision of services to directly assist people with daily living activities and personal needs and to assure adequate functioning and safety in their home and community. Services include:

- a. Hands-on assistance with activities of daily living such as dressing/undressing, bathing, feeding, managing medications and treatments that are normally self-administered, toileting, assistance with ambulation (including the use of a walker, cane, etc.), carrying out professional therapeutic treatment plans, grooming such as care of hair, teeth or dentures. This may also include preparation and cleaning of areas used during provision of personal assistance such as the bathroom and kitchen.
- b. Direct assistance with instrumental activities of daily living, as well as observation or cueing of the member to safely and appropriately complete activities of daily living and instrumental activities of daily living. Providing supervision necessary for member safety at home and in the community. This may include observation to assure appropriate self-administration of medications, assistance with bill paying and other aspects of money management, assistance with communication, arranging and using transportation and personal assistance at a job site and in non-employment related community activities.
- c. Routine housekeeping and cleaning activities performed for a member consisting of tasks that take place on a daily, weekly or other regular basis. These may include: washing dishes, laundry, dusting, vacuuming, meal preparation, shopping and similar activities that do not involve hands-on care of the member.
- d. Intermittent major household tasks that must be performed seasonally or in response to some natural or other periodic event for reasons of health and safety or the need to assure the member's continued community living. These may include: outdoor activities such as yard work and snow removal; indoor activities such as window washing; cleaning of attics and basements; cleaning of carpets, rugs and drapery; refrigerator/freezer defrosting; the necessary cleaning of vehicles, wheelchairs and other adaptive equipment and home modifications such as ramps. This also may include assistance with packing/unpacking and household cleaning/organizing when a member moves.

However, Personal Care Services are more narrowly defined by Wis. Admin. Code §DHS 107.112.

In any event, in 2015, iCare increased Petitioner's supportive care services from 9.75 hours per week to 12 hours per week, but reduced personal care services from 10.75 hours per week to 7.25 hours per week.² As such, this decision will focus on the reduction of the personal care services portion of the larger "Supportive Home Care" umbrella.

Personal Care Service Hours

Looking at the reduction in hours, it appears that the reduction in personal care service hours resulted from three things:

1. Elimination of time for incontinence care, which was 35 minutes per week,
2. Reduction in the in time allowed for showering from 90 minutes per task to 30 minutes per task,
3. Reduction in the number of sponge baths and reduction in the time allowed for a sponge bath from 30 minutes per task to 15 minutes per task.

With regard to incontinence care, the agency did not have much of an explanation for why it eliminated time for this task, other than to say the Petitioner did not report needing assistance with incontinence care. Given that it was stated in the last Personal Care Tool, the interdisciplinary team should have, at the very least, questioned the need for that task. The Petitioner testified that she does use an adult diaper, but stated that she needs assistance changing it. Petitioner's caregiver corroborated the Petitioner's testimony and the claim is supported by the undisputed fact that Petitioner needs assistance with dressing. Indeed, if she needs help getting her underpants and pants on, she would need assistance changing an adult diaper. Accordingly, it is found that time for assistance with incontinence should be restored to 35 minutes per week.

With regard to the reduction in time for showering, the number of showers per week increased from two to three per week, but the time allowed per shower was decreased from 90 minutes per episode to 30 minutes per episode. So, the total time allowed for showering changed from 180 minutes per week to 90 minutes per week. iCare did not provide an adequate explanation for how it determined 90 minutes or 30 minutes were required per shower, nor did it explain why the time allowed for showering changed.

Had this been a regular, fee-for service Medicaid case, 30 minutes per episode of bathing would be permitted. (See iCare's Exhibit 7) In light of this fact, 90 minutes per episode of showering seems excessive, especially since there is nothing in the record to explain why the Petitioner's caregiver requires extra time to assist the Petitioner with showering. Accordingly, it is found that 90 minutes per week for assistance with 3 showers is appropriate.

With regard to sponge bathing, the frequency decreased from five times per week to four times a week and the time allowed for each episode of sponge bathing was decreased from 30 minutes to 15 minutes. It is undisputed that the reduction in the number of sponge baths allowed was done at the Petitioner's request. However, iCare has not adequately explained why it reduced the time allowed per sponge from 30 minutes to 15 minutes. Indeed, it has not stated any change in circumstances, nor provided any guideline or policy manual that required this reduction in time. As discussed above, 30 minutes per episode of bathing is generally allowed under regular fee-for service Medicaid. As such, it is found that the time per episode of sponge bathing should be restored to 30 minutes per episode for a total of 120 minutes per week.

Accordingly, Petitioner's Personal Care Services should work out as follows:

Combing Hair (3x per week)	10 minutes per task	30 minutes per week
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² In terms of total time, Supportive Home Care Services was reduced from 20.5 hours per week of combined personal care and supportive home care services to 19.25 hours of combined personal and supportive home care services.

Lotion Application (7x per week)	5 minutes per task	35 minutes per week
Nail Care (1x per week)	5 minutes per task	5 minutes per week
Undressing/Dressing (2x per day)	30 minutes per day	210 minutes per week
Tub/Shower bathing (3x per week)	30 minutes per task	90 minutes per week
Sponge bathing (4x per week)	30 minutes per task	120 minutes per week
Incontinence Assistance (7x per week)	5 minutes per task	35 minutes per week

525 minutes per week 8.75 hours per week

Petitioner argued that she should have additional time for assistance with mobility and transfers. However, at the time of the Long Term Care Functional Screen, Petitioner was observed to be independent with mobility when she used her walker. As such, she does not need the assistance of a personal care worker for this task. With regard to transfers, the Petitioner was noted to have grab bars by her bed to assist her with transfers and she was approved for purchase of a bedrail. As such, she should not need the assistance of a PCW for that task.

CONCLUSIONS OF LAW

iCare did not correctly reduce the Petitioner's personal care service hours.

THEREFORE, it is

ORDERED

That iCare issue to the Petitioner a new notice of decision, approving a total of 8.75 hours / 35 units per week of personal care services, for a total of 20.75 hours / 83 units per week of combined personal care and supportive home care services. iCare shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

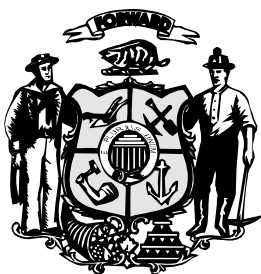
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 20, 2015.

iCare
Office of Family Care Expansion